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09/659,864

09/12/2000

J. Leslie Vogel III

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02/27/2008

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EXAMINER

TRAN, TONGOC

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* J. LESLIE VOGEL III

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Appeal 2007-1121  
Application 09/659,864  
Technology Center 2100

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Decided: February 27, 2008

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Before KENNETH W. HAIRSTON, JEAN R. HOMERE, and JOHN A.  
JEFFERY, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

## STATEMENT OF THE CASE

In a paper filed December 19, 2007, Appellant requests reconsideration under 37 C.F.R. § 41.52 from an Opinion of the Board of Patent Appeals and Interferences dated October 19, 2007 (opinion, hereinafter.) In the opinion, we affirmed the Examiner's rejection of claims 1 through 51.

We have carefully reviewed the opinion in light of Appellant's request, and we find no error in the analysis or logic set forth therein. We have given full consideration to Appellant's remarks.<sup>1</sup> We have, however, found no basis upon which to grant Appellant's request for rehearing. We, therefore, decline to make any changes to our prior opinion with respect to the claims noted above for the reasons that follow.

First, Appellant contends that the Board overlooked or misapprehended Appellant's separate arguments seeking reversal of the Examiner's rejection of claims 1, 16, 21, 26, 31, 36, 42, and 46 as allegedly not complying with the written description requirement under 35 U.S.C. § 112, first paragraph. (Req. Reh'g 2.) Further, Appellant contends that the Board overlooked or misapprehended Appellant's separate arguments seeking reversal of the Examiner's rejection of claims 1, 16, 21, 26, 31, 36, 42, and 46 as allegedly being anticipated by Patiyoote et al. ("Technique for authentication protocols and key distribution on wireless ATM networks," ACM SIGOPS Operating System Review, Volume 32, Issue 4, October 1998) under 35 U.S.C. § 102. *Id.*

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<sup>1</sup> Request for Rehearing at pages 1-4.

We note that the Examiner timely withdrew the two afore-cited grounds of rejection at page 13 of the Examiner's Answer, dated November 9, 2006. Therefore, Appellant's arguments regarding these two grounds of rejection were moot at the time of the opinion. Consequently, we properly omitted to address Appellant's arguments regarding these rejections in the opinion.

Next, Appellant contends that the Board overlooked or misapprehended Appellant's arguments since it found that the Examiner correctly interpreted Lewis as inherently teaching the claimed characteristics for sending a security preference from a station to an access point, and vice-versa. Appellant therefore submits that the Examiner's interpretation of Lewis, as adopted by the Board, is contrary to the teaching of the reference. (Req. Reh'g. 3-4.)

We note that neither Appellant's Appeal Brief nor the Reply Brief raised this particular argument. As noted in the opinion, Appellant's arguments focused on whether Lewis teaches an access point that supports a plurality of protocols. (Opinion 4.) Appellant's arguments also focused on whether the combination of Lewis and Quick teaches generating authentication information using a key. *Id.*

Thus, the argument of whether Lewis teaches (1) a characteristic for sending a security preference from a station to an access point, and (2) another characteristic for sending a security preference from the access point

to the station, as presently raised in this request for rehearing, was not previously submitted in earlier Briefs before we rendered our decision. Arguments not raised in the Briefs before the Board and evidence not previously relied upon are not permitted in the request for rehearing. *See* 37 C.F.R. § 41.52. In consequence, we will not entertain such new argument. Therefore, we maintain our position that Appellant has not shown that the Examiner erred in concluding that claims 1 through 3, 9 through 17, 19 through 22, 24 through 27, 29 through 32, 34 through 38, 40 through 48, 50, and 51 are unpatentable over the combination of Lewis and Quick under 35 U.S.C. § 103. Similarly, we maintain our position that Appellant has not shown that the Examiner erred in concluding that claims 4 through 8, 18, 23, 28, 33, 39, and 49 are unpatentable over the combination of Lewis, Quick and Schnieier under 35 U.S.C. § 103.

#### CONCLUSION

In view of the foregoing discussion, we grant Appellant's request for rehearing to the extent of reconsidering our decision. However, we deny Appellant's request with respect to making any change thereto.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

REQUEST FOR REHEARING DENIED

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Appeal 2007-1121  
Application 09/659,864